

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.923/Kol/2016

(निर्धारण वर्ष /Assessment Year:2005-2006)

Sigma Infotech Pvt. Ltd., Kalyan Bhavan, 2, Elgin Road, Kolkata-700020	Vs.	ITO Ward-10(3), Kolkata-700069
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHCS 2874 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Miraj D. Shah, A/R

राजस्व की ओर से /Revenue by : Shri Sallong Yadeen, ADLL.CIT

सुनवाई की तारीख / **Date of Hearing** : **23/11/2016**

घोषणा की तारीख/**Date of Pronouncement** **30/11/2016**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to the assessment year 2005-2006, is directed against an order passed by Id. Commissioner of Income Tax (Appeals)-11, Kolkata in Appeal No.432/CIT(A)-11/Wd.-12(3)/14-15/Kol, dated 24.02.2016, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section.143(3) of the Income Tax Act 1961, (in short the 'Act'), dated 20.12.2007.

2. Brief facts of the case qua the assessee are that the assessee company had filed Income Tax Return for the assessment year 2005-06 on 6-12-2005 declaring total income of Rs.2,37,060/-. The assessee's case was selected for scrutiny u/s.143(3) of the Act and the AO has computed the assessment after making disallowance (based on estimate @10% of the expenses) i.e. the AO has disallowed business promotion

expenses, office rent, travelling expenses, annual maintenance charges, project expenses @10% of these expenses based on the estimate because the assessee during the assessment proceedings could not produce supporting bills and vouchers in respect of all these expenses.

3. Aggrieved from the order of Id. AO, the assessee filed an appeal before the Id. CIT(A), who has also confirmed the addition made by the AO, by observing the followings :-

“4.1 In this case Assessing Officer has disallowed 10% of expenses incurred under the heads 'business promotion', 'office rent', 'travelling expenses', 'annual maintenance charges paid' and 'project expenses' as the assessee could not produce the entire bills/vouchers for these expenses. Thus, disallowance of Rs.3,30,044/- was made. As the issue relates to factual verification and the assessee has not produced any supporting evidences, I have no option but to confirm the addition of Rs.3,30,044/-. The grounds of appeal are dismissed.”

4. Not being satisfied with the order of Id. CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal :-

1. For that in the facts and circumstances of the case the appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.

2. For that in the facts and circumstance the Ld. Commissioner of Income Tax Appeals passed the appellate order without giving proper opportunity of hearing to the assessee hence is 'bad in law and be quashed.

3. For that in the facts & circumstances of the case the Ld. Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs.15,779.12/- being 10% of the expenditure incurred under the head Business Promotion on estimation without any justified reasons and thus the same be reversed.

4. For that in the facts & circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.11,637.50/- being 10% of the expenditure incurred towards Office Rent The disallowances is unjustified and the addition made should be reversed.

5. For that in the facts & circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.12,664.80/- being 10% of the expenses incurred under the head Traveling expenses, the said being an expenditure for the purpose of business thus the same be allowed' and the disallowance made be reversed.

6. For that in the facts & circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.2,41,759.30/- being 10% of the expenditure towards Annual Maintenance charge on the basis of estimation and without any reason. The said disallowance is unjustified and uncalled for and as such the addition should be reversed.

7. For that in the facts & circumstances of the case the Ld. Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.21,209.10/- being 10% of expenditure incurred toward Project expenses without any reason, the said being an expenditure for the purpose of business thus the same be allowed and the disallowance made be reversed.

8. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.

9. For that the interest computed u/s 234A/B/C/D of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case it be directed to re-compute the interest as per law.

Although in this appeal, the assessee has raised multiple grounds of appeal, but at the time of hearing the main grievance of the assessee has been confined to grounds No.3, 4, 5, 6 & 7 and other grounds of appeal were not pressed by the assessee.

4.1 In all the grounds raised by the assessee, there is a common issue involved. The AO disallowed 10% of the expenditure observing that assessee had not produced bills and vouchers of these expenses. Since in all these grounds, common issue is involved, i.e. disallowance of 10% of estimate basis, therefore, these grounds of appeal are being adjudicated *en masse*.

5. Ld. AR for the assessee has submitted that the Id. CIT(A) has confirmed the additions made by the AO without any basis. The AO made the addition @ 10% of all the expenses which is based on surmise, guess and conjectures. Ld. AR for the assessee has further submitted that the AO made the addition mechanically and without applying the mind. The assessee has submitted during the assessment proceedings, the books of accounts, explanations and the following documents :-

- i) Details of share capital and share application money with name and address of the shareholders;
- ii) A copy of Memorandum of Association;
- iii) Copy of letter dated 2-4-2005 regarding details of car loan from HDFC Ltd.
- iv) Details of bank statements being overdraft with Indian Bank;
- v) Name and address of Sundry Debtors and Sundry Creditors;
- vii) Security deposit from staff;
- viii) Details of sales & services and other direct income;
- ix) Details of closing stock;
- x) Details of expenses
- xi) Purchase ledger
- xii) Copy of bank statements
- xiii) Cash Book

All the books of accounts, documents, bills and vouchers, which were produced, have been checked by the AO. The AO did not find any error in the documents and explanation submitted by the assessee, therefore, the addition based on estimation may be deleted.

Ld. AR for the assessee also submitted that the AO did the guesswork as he did not bring any cogent material on record to show that the expenses claimed by the assessee are not genuine. Ld. AR for assessee also relied on the judgments in the case of Mukesh Kumar Mahawar, ITA

No.615/LKW//2014, order dated 16-09-2015, wherein it has been observed by the Tribunal as under :-

4. Having carefully examined the orders of the lower authorities in the light of the rival submissions, we are of the view that the ad hoc disallowance is not permissible under the law and if the Assessing Officer is not satisfied with a particular expense, he may make necessary verification and also to point out defect in the books of account, but ad hoc disallowance should not be made by making general observation. In the instant case, since ad hoc disallowance is made by making general observation, we do not find any merit in the addition made by the Assessing Officer. We accordingly delete the addition made on ad hoc basis after setting aside the order of the Id. CIT(A)

6. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id. AR for the assessee are supported by the above cited Judgment of Lucknow Bench of the Tribunal (supra) and the facts narrated by him above. Ld. AR for the assessee has pointed out that the assessee during the assessment proceedings, submitted books of accounts details, ledger account and details of sundry debtors and creditors, security deposit from staff, purchase ledger and details of expenses. The AO did not find any discrepancy or mistake in the details/documents submitted by the assessee. The AO made the addition @10% of the expenditure incurred by the assessee based on the estimation. Ld. AR also pointed out that ad hoc disallowance is not permissible under the law and if the AO is not satisfied with a particular expense, he may make necessary verification and also to point out defect in the books of account, but ad hoc disallowance should not be made by making general observation. In the

instant case, adhoc disallowance was made by AO based on general observation without brining any cogent material on record. Hence the addition made by the AO and confirmed by the Id. CIT(A) needs to be deleted. Accordingly, we delete the addition.

7. In the result, appeal of the assessee on all grounds is allowed.

Order pronounced in the open court on this 30/ 11/2016.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 30/11/2016

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-Sigma Infotech(P) Ltd.
2. प्रत्यर्थी / The Respondent.-ITO, Ward-10(3), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता